

THE OFFENCE OF ZINA (ENFORCEMENT OF HUDOOD) ORDINANCE, 1979

ORDINANCE NO. VII OF 1979
FEBRUARY 9TH, 1979

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An Ordinance to bring in conformity with the injunctions of Islam the law relating to the Offence of Zina.

WHEREAS it is necessary to modify the existing law relating to zina so as to bring it in conformity with the Injunctions of Islam as set out in the Holy Quran and Sunnah;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

Now, THEREFORE, in pursuance of the Proclamation of the fifth day of July 1977, read with the Laws (Continuance in Force), Order, 1977 (C.M.L.A. Order No. I of 1977), and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:-

(1) Short title, extent and commencement

- This Ordinance may be called the Offence of Zina (Enforcement of Hudood) Ordinance, 1979.
- It extends to the whole of Pakistan.
- It shall come into force on the twelfth day of Rabi-ul-Awwal, 1399 Hijri, that is, the tenth day of February, 1979.

(2) Definitions

In this Ordinance, unless there is anything repugnant in the subject of context:

(a) "adult" means a person who has attained, being a male, the age of eighteen years or, being a female, the age of sixteen years, or has attained puberty;

(b) "hadd" means punishment ordained by the Holy Quran or Sunnah;

(c) "marriage" means marriage which is not void according to the personal law or the parties, and "married" shall be construed accordingly;

(d) "Muhsan" means

(i) a Muslim adult man who is not insane and has had sexual intercourse with a Muslim adult woman who, at the time he had sexual intercourse with her, was married to him and was not insane; or

(ii) a Muslim adult woman who is not insane and has had sexual intercourse with a Muslim adult man who, at the time she had sexual intercourse with him, was married to her and was not insane; and

(e) "tazir" means any punishment other than "hadd", and all other terms and expressions not defined in this Ordinance shall have the same meaning as the Pakistan Penal Code, or the Code of Criminal Procedure, 1898.

3. Ordinance to override other Laws

The provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force.

4. Zina

A man and a woman are said to commit 'Zina' if they wilfully have sexual intercourse without being validly married to each other.

Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of Zina.

5. Zina liable to hadd.

(1) Zina is zina liable to hadd if-

(a) it is committed by a man who is an adult and is not insane with a woman to whom he is not, and does not suspect himself to be married; or

(b) it is committed by a woman who is an adult and is not insane with a man to whom she is not, and does not suspect herself to be, married.

(2) Whoever is guilty of Zina liable to hadd shall, subject to the provisions of this Ordinance, -

(a) if he or she is a muhsan, be stoned to death at a public place; or

(b) if he or she is not muhsan, be punished, at a public place; with whipping numbering one hundred stripes.

(3) No punishment under sub-section (2) shall be executed until it has been confirmed by the Court to which an appeal from the order of conviction lies; and if the punishment be of whipping; until it is confirmed and executed, the convict shall be dealt with in the same manner as if sentenced to simple imprisonment.

6. Zina bil Jabr

(1) A person is said to commit zina-bil-jabr if he or she has sexual inter-course with a woman or man, as the case may be, to whom he or she is not validly married, in any of the following circumstances, namely:-

(a) against the will of the victim;

(b) without the consent of the victim;

(c) with the consent of the victim, when the consent has been obtained by putting the victim in fear of death or of hurt; or

(d) with the consent of the victim, when the offender knows that the offender is not validly married to the victim and that the consent is given because the victim believes that the offender is another person to whom the victim is or believes herself or himself to be validly married.

Explanation: Penetration is sufficient to constitute the sexual inter-course necessary to the offence of zina-bil-jabr.

(2) Zina-bil-jabr is zina-bil-jabr liable to hadd if it is committed in the committed in the circumstances specified in sub-section (1) of section 5.

(3) Whoever is guilty of zina-bil-jabr liable to hadd shall subject to the provisions of this Ordinance, -

(a) if he or she is a muhsan, be stoned to death at a public place; or

(b) if he or she is not muhsan, be punished with whipping numbering one hundred stripes, at a public place, and with such other punishment, including the sentence of death, as the Court may deem fit having regard to the circumstances of the case.

(4) No punishment under sub-section (3) shall be executed until it has been confirmed by the Court to which an appeal from the order of conviction lies; and if the punishment be of whipping until it is confirmed and executed, the convict shall be dealt with in the same manner as if sentenced to simple imprisonment.

7. Punishment for Zina or zina-bil-jabr where convict is not an adult.

A person guilty of zina or zina-bil-jabr shall, if he is not an adult, be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both, and may also be awarded the punishment of whipping not exceeding thirty stripes:

Provided that, in the case of zina-bil-jabr, if the offender is not under the age of fifteen years, the punishment of whipping shall be awarded with or without any other punishment.

8. Proof of zina or zina-bil-jabr liable to hadd.

Proof of zina-bil-jabr liable to hadd shall be in one of the following forms, namely:-

(a) the accused makes before a Court of competent jurisdiction a confession of the commission of the offence; or

(b) at least four Muslim adult male witnesses, about whom the Court is satisfied, having regard to the requirements of tazkiyah al-shuhud, that they are truthful persons and abstain from major sins (kabair), give evidence as eye-witnesses of the act of penetration necessary to the offence:

Provided that, if the accused is a non-Muslim, the eye-witnesses may be non-Muslims.

9. Case in which hadd shall not be enforced

(1) In a case in which the offence of zina or zina-bil-jabr is proved only by the confession of the convict, hadd, or such part of it as is yet to be enforced, shall not be enforced if the convict retracts his confession before the hadd or such part is enforced.

(2) In a case in which the offence of zina or zina-bil-jabr is proved only by testimony, hadd or such part of it as is yet to be enforced, shall not be enforced if any witness resiles from his testimony before hadd or such part is enforced, so as to reduce the number of eye-witnesses to less than four.

(3) In the case mentioned in sub-section (1), the Court may order retrial.

(4) In the case mentioned in sub-section (2), the Court may award tazir on the basis of the evidence on record.

10. Zina or zina-bil-jabr liable to tazir.

(1) Subject to the provisions of section 7, whoever commits zina or zina-bil-jabr which is not liable to hadd, or for which proof in either of the forms mentioned in section 8 is not available and the punishment of qazf liable to hadd has not been awarded to the complainant, or for which hadd may not be enforced under this Ordinance, shall be liable to tazir.

(2) Whoever commits zina liable to tazir shall be punished with rigorous imprisonment for a term which [Click here for amendment] may extend to ten years and with whipping numbering thirty stripes, and shall also be liable to fine.

(3) Whoever commits zina-bil-jabr liable to tazir shall be punished with imprisonment for a term which [Click here for amendment] shall not be less than four years nor more than twenty-five years and shall also be awarded the punishment of whipping numbering thirty stripes.

(4) When zina-bil-jabr liable to tazir is committed by two or more persons in furtherance of common intention of all each of such persons shall be punished with death.

11. Kidnapping, abducting or inducing women to compel for marriage etc.

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit inter-course, or knowing it to be likely that she will be forced or seduced to illicit inter-course, shall be punished with imprisonment for life and with whipping not exceeding thirty stripes, and shall also be liable to fine; and whoever by means of criminal intimidation as defined in the Pakistan Penal Code, or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit inter-course with another person shall also be punishable as aforesaid.

12. Kidnapping or abducting in order to subject person to unnatural lust.

Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to the unnatural list of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with death or rigorous imprisonment for a term which may extend to twenty-five years, and shall also be liable to fine, and, if the punishment be one of imprisonment, shall also be awarded the punishment of whipping not exceeding thirty stripes.

13. Selling person for purposes of prostitution, etc.

Whoever sells, lets to hire, or otherwise disposes of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose, shall be punished with imprisonment for life and with whipping not exceeding thirty stripes, and shall also be liable to fine.

Explanations:

(a) When a female is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

(b) For the purposes of this section and section 14 "illicit intercourse" means sexual inter-course between persons not united by marriage.

14. Buying a person for purposes of prostitution, etc.

Whoever buys, hires or otherwise obtains possession of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose, shall be punished with imprisonment

for life and with whipping not exceeding thirty stripes, and shall also be liable to fine.

Explanation: Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

15. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage

Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit with him in that belief, shall be punished with rigorous imprisonment for a term which may extend to twenty-five years and with whipping not exceeding thirty stripes, and shall also be liable to fine.

16. Enticing or taking away or detaining with criminal intent a woman

Whoever takes or entices away any woman with intent that she may have illicit inter-course with any person, or conceals or detains with intent any woman, shall be punished with imprisonment of either description for a term which may extend to seven years and with whipping not exceeding thirty stripes, and shall also be liable to fine.

17. Mode of execution of punishment of stoning to death

The punishment of stoning to death awarded under section 5 or section 6 shall be executed in the following manner, namely :-

Such of the witnesses who deposed against the convict as may be available shall start stoning him and, while stoning is being carried on, he may be shot dead, whereupon stoning and shooting shall be stopped.

18. Punishment for attempting to commit an offence

Whoever attempts to commit an offence punishable under this Ordinance with imprisonment or whipping, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall be punished with imprisonment for a term which may extend to one-half of the longest term provided for that offence, or with whipping not exceeding thirty stripes, or with such fine as is provided for the offence, or with any two of, or all, the punishments.

19. Application of certain provisions of Pakistan Penal Code, and amendment.

(1) Unless otherwise expressly provided in this Ordinance, the provisions of sections 34 to 38 of Chapter II, sections 63 to 72 of Chapter III and Chapters V and VA or the Pakistan Penal Code shall apply, mutatis mutandis, in respect of offences under this Ordinance.

(2) Whoever is guilty of the abetment of an offence liable to hadd under this Ordinance shall be liable to the punishment provided for such offence as tazir.

(3) In the Pakistan Penal Code, -

(a) section 366, section 372, section 373, section 375 and section 376 of Chapter XVI and section 493, section 497 of Chapter XX shall stand repealed; and

(b) in section 367, the words and comma "or to the unnatural lust of any person," shall be omitted.

20. Application of Code of Criminal Procedure 1898 and amendment

(1) The provisions of the Code of Criminal Procedure, 1898, hereafter in this section referred to as the Code, shall apply, mutatis mutandis in respect of cases under this Ordinance:

Provided that, if it appears in evidence that the offender has committed a different offence under any other law, he may, if the Court is competent to try that offence and award punishment therefor, be convicted and punished for that offence[Click here for amendment]. :

Provided further that an offence punishable under this Ordinance shall be triable by a Court of Session and not by a Magistrate authorised under section 30 of the said Code and an appeal from an order the Court of Session shall lie to the Federal Shariat Court:

Provided further that a trial by a Court of Session under this Ordinance shall ordinarily be held at the headquarters of the Tehsil in which the offence is alleged to have been committed.

(2) The provision of the Code relating to the confirmation of the sentence of death shall apply, mutatis mutandis, to confirmation of sentences under this Ordinance.

(3) The provisions of section 198, section 199, section 199A or section 199B of the Code shall not apply to the cognizance of an offence punishable under section 15 or section 16 of this Ordinance.

(4) The provision of sub-section (3) of section 391 or section 393 of the Code shall not apply in respect of the punishment of whipping awarded under this Ordinance.

(5) The provisions of Chapter XXIX of the Code shall not apply in respect of punishments awarded under section 5 or section 6 of this Ordinance.

(6) In the Code, section 561 shall stand repealed.

21. Presiding Officer of Court to be Muslim.

The Presiding Officer of the Court by which a case is tried, or an appeal is heard, under this Ordinance shall be a Muslim:

Provided that, if the accused is a non-Muslim, the Presiding Officer may be a non-Muslim.

22. Saving

Nothing in this Ordinance shall be deemed to apply to the cases pending before any Court immediately before the commencement of this Ordinance, or to offences committed before such commencement.

Source: Manual of Hudood Laws in Pakistan, Kausar Brothers, Law Publishers, Lahore